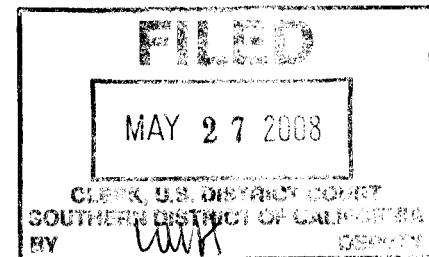


1 KAREN P. HEWITT  
 2 United States Attorney  
 3 CALEB E. MASON  
 4 Assistant United States Attorney  
 5 California State Bar No. 246653  
 6 United States Attorney's Office  
 7 Federal Office Building  
 8 880 Front Street, Room 6293  
 9 San Diego, California 92101  
 10 Telephone: (619) 557-5956



11 Attorneys for Plaintiff  
 12 UNITED STATES OF AMERICA

13  
 14 UNITED STATES DISTRICT COURT

15 SOUTHERN DISTRICT OF CALIFORNIA *08CR1091-L*

|    |                           |   |                                      |
|----|---------------------------|---|--------------------------------------|
| 16 | UNITED STATES OF AMERICA, | ) | Magistrate Case No. 08MJ1350         |
| 17 | Plaintiff,                | ) | <b>STIPULATION OF FACT AND JOINT</b> |
| 18 | v.                        | ) | <b>MOTION FOR RELEASE OF</b>         |
| 19 | ERNESTO ARTURO TORRES,    | ) | <b>MATERIAL WITNESS(ES) AND</b>      |
| 20 | Defendant.                | ) | <b>ORDER THEREON</b>                 |

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21 **(Pre-Indictment Fast-Track Program)**

22         **IT IS HEREBY STIPULATED AND AGREED** between the plaintiff, UNITED STATES  
 23 OF AMERICA, by and through its counsel, Karen P. Hewitt, United States Attorney, and Caleb E.  
 24 Mason, Assistant United States Attorney, and defendant ERNESTO ARTURO TORRES, by and  
 25 through and with the advice and consent of defense counsel, Sara M. Peloquin, Federal Defenders  
 26 of San Diego, Inc., that:

27         1. Defendant agrees to execute this stipulation on or before the first preliminary hearing  
 28 date and to participate in a full and complete inquiry by the Court into whether defendant knowingly,  
 1 intelligently and voluntarily entered into it. Defendant agrees further to waive indictment and plead  
 2 guilty to the pre-indictment information charging defendant with a non-mandatory minimum count  
 3 of Bringing in Aliens Without Presentation and Aiding and Abetting, in violation of 8 U.S.C.  
 4 § 1324(a)(2)(B)(iii) and 18 U.S.C. § 2.

5 //

6 CEM:lg:5/13/08

*(Not with bond)*

1           2. Defendant acknowledges receipt of a plea agreement in this case and agrees to  
 2 provide the signed, original plea agreement to the Government not later than five business days  
 3 before the disposition date set by the Court.

4           3. Defendant agrees to plead guilty to the charge pursuant to the plea agreement on or  
 5 before **June 11, 2008**.

6           4. The material witness, Berta Elisa Garcia-Gonzalez, in this case:  
 7           a. Is an alien with no lawful right to enter or remain in the United States;  
 8           b. Entered or attempted to enter the United States illegally on or about  
 9 April 29, 2008;  
 10           c. Was found in a vehicle driven by defendant at the Otay Mesa, California, Port  
 11 of Entry (POE), and that defendant knew or acted in reckless disregard of the fact that she was an  
 12 alien with no lawful right to enter or remain in the United States;  
 13           d. Was paying or having others pay on her behalf \$3,000-\$4,000 to others to be  
 14 brought into the United States illegally and/or transported illegally to her destination therein; and,  
 15           e. May be released and remanded immediately to the Department of Homeland  
 16 Security for return to her country of origin.

17           5. After the material witness is ordered released by the Court pursuant to this stipulation  
 18 and joint motion, if defendant does not plead guilty to the charge set forth above, for any reason, or  
 19 thereafter withdraws his guilty plea to that charge, defendant agrees that in any proceeding,  
 20 including, but not limited to, motion hearings, trial, sentencing, appeal or collateral attack, that:

21           a. The stipulated facts set forth in paragraph 4 above shall be admitted as  
 22 substantive evidence;  
 23           b. The United States may elicit hearsay testimony from arresting agents  
 24 regarding any statements made by the material witness(es) provided in discovery, and such  
 25 testimony shall be admitted as substantive evidence under Fed. R. Evid. 804(b)(3) as statements  
 26 against interest of (an) unavailable witness(es); and,

27           c. Understanding that under Crawford v. Washington, 124 S. Ct. 1354 (2004),  
 28 Stipulation of Fact and Joint Motion for Release of  
 Material Witness(es) And Order Thereon in  
 United States v. Ernesto Arturo Torres

“testimonial” hearsay statements are not admissible against a defendant unless defendant confronted and cross-examined the witness(es) who made the “testimonial” hearsay statements, defendant waives the right to confront and cross-examine the material witness(es) in this case.

6. By signing this stipulation and joint motion, defendant certifies that defendant has read it (or that it has been read to defendant in defendant's native language). Defendant certifies further that defendant has discussed the terms of this stipulation and joint motion with defense counsel and fully understands its meaning and effect.

8       Based on the foregoing, the parties jointly move the stipulation into evidence and for the  
9 immediate release and remand of the above-named material witness(es) to the Department of  
10 Homeland Security for return to her country of origin.

11 It is STIPULATED AND AGREED this date.

Respectfully submitted,

KAREN P. HEWITT  
United States Attorney

15 Dated: 5/27/08

*Aaron Feuerstein*  
CALEB E. MASON  
Assistant United States Attorney

17 Dated: 5/16/08

SARA M. PELOQUIN  
Defense Counsel for  
ERNESTO ARTURO TORRES

20 Dated: 5/16/08

Ernesto Torres  
ERNESTO ARTURO TORRES  
Defendant

28 Stipulation of Fact and Joint Motion for Release of  
Material Witness(es) And Order Thereon in  
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## ORDER

2       Upon joint application and motion of the parties, and for good cause shown,  
3       **THE STIPULATION** is admitted into evidence, and,  
4       **IT IS ORDERED** that the above-named material witness(es) be released and remanded  
5       forthwith to the Department of Homeland Security for return to her country of origin.

SO ORDERED.

Dated: 5/27/08

  
United States Magistrate Judge

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